

IT 00-25

Tax Type: Income Tax

Issue: Audit Methodologies and/or Other Computational Issues

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

v.

**DOE'S SPORTS BAR, INC.,
Taxpayer**

No. 99-IT-0000
FEIN: 00-0000000
Tax Years 12/31/96, 12/31/97

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mark Rosenbloom for Doe's Sports Bar, Inc.; Rick Walton, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

This matter comes on for hearing pursuant to the taxpayer's protest of a Notice of Deficiency ("NOD") issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") on November 10, 1999. Pursuant to a pre-hearing order, the parties identified the issue to be resolved at hearing as "whether the adjustments to Taxpayer's IL-1120-ST (Illinois Small Business Corporation Replacement Tax Return) for the period January 1, 1996 through June 30, 1998 (the "Audit Period") was properly calculated based on the prior ROT audit of the Taxpayer". After a review of the record and the evidence at the hearing, it is my recommendation that this matter be resolved in favor of the Department.

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Notice of Deficiency issued November 10, 1999, showing a total amount due and owing in the amount of \$1,661 for taxable years ending 12/31/96 and 12/31/97. Department's Ex. 1.¹
2. Doe's Sports Bar, Inc. (hereinafter "taxpayer") is a Subchapter S Corporation subject to the Illinois Corporation Income Tax Replacement Tax. Tr. p. 4; Department's Ex. 1.
3. The Department conducted a Retailers' Occupation Tax ("ROT") audit of the taxpayer that included the tax years ending 12/31/96 and 12/31/97. Tr. p. 4; Department's Ex. 2.
4. The Department determined that the taxpayer did not have daily register tapes, a general ledger, a sales journal or any type of expense journal; consequently, the Department used generally accepted auditing standards to estimate the taxpayer's gross sales and net income for the tax years ending 12/31/96 and 12/31/97. Tr. pp. 4, 5.
5. Based on the ROT audit, the Department determined that the taxpayer underreported sales for tax periods including the tax years in controversy. Tr. p. 5.
6. On December 14, 1998, at the conclusion of the ROT audit, the taxpayer executed a form EDA-105 and indicated that the ROT audit findings are true, correct and complete. Department's Ex. 3.

¹ Unless otherwise noted, findings of fact apply to the tax periods.

7. On April 15, 1999, the Department issued a “Notice of Assessment for Form EDA-105” assessing the taxpayer for the tax remaining due and negligence penalty agreed to by the taxpayer when it signed the EDA-105 plus a late payment penalty and interest. Department’s Ex. 2.
8. On January 7, 1999, the taxpayer’s attorney sent a letter to the Department indicating that the taxpayer did not agree with the Department’s ROT audit findings. Taxpayer’s Ex. 2.
9. The Notice of Deficiency in controversy was issued on November 10, 1999, and was based upon the Department’s determination that the taxpayer underreported its sales and therefore, its net income for the tax periods in controversy. Tr. p. 5; Department’s Ex. 1.

Conclusions of Law:

The issue in this case is whether the Department has properly assessed additional Illinois Corporation Income and Replacement Tax liability for tax years ending 12/31/96 and 12/31/97. Section 914 of the Illinois Income Tax Act provides that the Department’s *prima facie* case is established by the admission into evidence of the Department’s determination of the correct amount of tax due and the Notice of Deficiency. 35 ILCS 5/914, Balla v. Department of Revenue, 96 Ill. App. 3d 293 (1st Dist. 1981). To overcome the Department’s *prima facie* case the taxpayer must present consistent, probable evidence identified with its books and records. Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987). In the instant case, the documentary evidence in the record establishes the correctness of the Department’s calculation of the

taxpayer's Illinois Corporation Income and Replacement Tax liability for the aforementioned tax periods.

The taxpayer has introduced no evidence or testimony challenging the correctness of the Department's NOD. Rather, the taxpayer argues that it should not be liable for the tax in controversy because the conduct of the auditor conducting the ROT audit, upon which the NOD is based, was improper. Tr. pp. 7, 31, 32, 33. The taxpayer also contends that the ROT audit adjustments are incorrect. Tr. p. 28.

The taxpayer executed a Form EDA-105 at the conclusion of the audit. Department Ex. 3. By executing the EDA-105, the taxpayer agreed to pay the audit adjustments rather than protest them. Department Ex. 3. Accordingly, the Department issued a final assessment on April 15, 1999. Department's Ex. 2. In spite of the fact that the taxpayer signed the EDA-105, the taxpayer objects to the Department's treatment of the audit findings as agreed to by the taxpayer because the Department was subsequently advised by the taxpayer's lawyer that the taxpayer did not agree with the auditor's determinations. Tr. pp. 25, 27, 28; Taxpayer's Ex. 2.

In Department of Revenue for Use of People v. Jones, 141 Ill. App. 3d 968 (1st Dist. 1986) the Illinois Appellate Court held that once an assessment becomes final no issue of law or fact concerning the finalized liability can be raised in any subsequent proceeding. The Appellate Court again reached this conclusion in Department of Revenue v. R.S. Dombrowski Enterprises, Inc., 202 Ill. App. 3d 1050 (1st Dist. 1990). The court held that a taxpayer couldn't challenge the accuracy of an assessment once it becomes final even when the assessment is the basis of a subsequent deficiency determination. See also Calderwood Corporation v. George E. Mahin, 57 Ill. 2d 216, 220

(1974) (“It is clear from our decisions that if a proceeding is not brought under the Administrative Review Act for judicial review of the Department’s final assessment the assessment will be conclusive as to all questions affecting its merits”). Accordingly, this tribunal cannot properly consider evidence pertaining to the propriety or accuracy of the final ROT assessment underlying the notice of deficiency in controversy here.

The taxpayer admits that the sole basis for contesting the NOD at issue is the taxpayer’s objections to the ROT assessment. Tr. pp. 14, 15. For the reasons enumerated above, these objections cannot properly be considered in these proceedings. Since the taxpayer has introduced no other evidence or testimony to contest the Department’s deficiency determination, I find that the taxpayer has failed to rebut the Department’s *prima facie* case.

WHEREFORE, for the reasons stated above, it is my recommendation that the notice of deficiency issued to the taxpayer be affirmed and finalized as issued.

Ted Sherrod
Administrative Law Judge

Date: October 19, 2000